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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,917	03/26/2004	Todd R. Manion	30835/306066	9418
45373 7590 08/11/2008 MARSHALL, GERSTEIN & BORUN LLP (MICROSOFT) 233 SOUTH WACKER DRIVE 6300 SEARS TOWER CHICAGO, IL 60606				
EXAMINER				
BENZON, OREG C				
ART UNIT		PAPER NUMBER		
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08/11/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/810,917

Applicant(s)

MANION ET AL.

Examiner

GREG BENGZON

Art Unit

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 22-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20, 22-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-893)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

This application has been examined. Claims 1-20, 22-42 are pending. Claim 21 is cancelled.

Priority

The effective date of the claims described in this application is March 26, 2004.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 19,31,42 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 19,31,42 pertain to 'a computer-readable medium', which the Applicant Specifications (Page 8, Paragraph 026) define as a carrier wave or data signals embodied in a carrier wave. The Examiner notes that said carrier wave or data signals embodied in a carrier wave are non-statutory subject matter. The Examiner notes that absent some physical context, a signal per se is an abstract idea in much the same way that a mathematical algorithm without context is an abstract idea.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 19, 20, 31-35, 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crocitto (US Publication 2005/0144080) in view of Aboulhossn (US Patent 6938042).

Crocitto disclosed (re. Claim 1) a method for distributing, from a first computing device to at least one second computing device over a peer-to-peer network, a piece of data from a content server, the method comprising: obtaining the piece of data, by the first computing device, from the content server, the first computing device being a client of the content server and a peer in a peer-to-peer network group; (Crocitto-Paragraph 32, *'one client is chosen to receive the seed replica'*) wherein the at least one second computing device is also a peer in the peer-to-peer network group and the first

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computing device and the at least one second computing device are connected via a local area connection; (Crocitto-Paragraph 25) and obtaining the piece of data, by the second computing device, from the first computing device via the peer-to-peer network.(Crocitto-Paragraph 32, *'download takes place from the client that received the original seed replica'*)

While Crocitto substantially disclosed the invention Crocitto did not disclose (re. Claim 1) communicating to other peers in the peer-to-peer network group that the piece of data is available to be obtained from the first computing device and locating the piece of data on the first computing device, by the at least one second computing device.

Aboulhosn disclosed (re. Claim 1) communicating to other peers in the peer-to-peer network group that the piece of data is available to be obtained from the first computing device (Aboulhosn-Column 2 Lines 15-30, *'notification that a file is to be shared with the members of the group'*) and locating the piece of data on the first computing device, by the at least one second computing device. (Aboulhosn-Column 2 Lines 60-65, *'synchronize its copy of the group folder with the group owner'*)

Crocitto and Aboulhosn are analogous art because they present concepts and practices regarding distribution of content in a peer-to-peer network. At the time of the invention it would have been obvious to a person of ordinary skill in the networking art to combine Aboulhosn into Crocitto. The motivation for said combination would have been to enable the distribution client by Crocitto to generate more requests for the distributed content and thus earn more reward points from the distribution server.

Claims 19,31,42 describe a computer-readable medium containing instructions for performing the method of Claim 1. Claims 19,31 are rejected on the same basis as Claim 1.

Claims 20, 32 describe methods steps as Claim 1. Claims 20,32 are rejected on the same basis as Claim 1.

Furthermore Crocitto-Aboulhosn disclosed (re. Claim 32 ,42) redirecting the request from the content server to the first client. (Crocitto-Paragraph 32,'download takes place from the client that received the original seed replica')

Crocitto-Aboulhosn disclosed (re. Claim 33) wherein the communicating to other peers in the peer-to-peer network group comprises: updating a local data store with informational data about the piece of data; (Aboulhosn-Column 3 Lines 45-50,'distributing updates to the metadata of the shared file') and propagating the updates to the data store to local data stores residing on the other peers in the peer-to-peer network group. (Aboulhosn,Column 6 Lines 50-60,'sends metadata to the new

member)

Crocitto-Aboulhosn disclosed (re. Claim 34) wherein the locating the piece of data on the first computing device comprises: identifying in a local data store a record corresponding to the piece of data; and determining, from the record, at least one computing device in the peer-to-peer network group that possesses the piece of data. (Aboulhosn-Column 2 Lines 1-30)

Crocitto-Aboulhosn disclosed (re. Claim 35) wherein the obtaining the piece of data by the second computing device comprises: initiating a request, by the second computing device, to the first computing device for the piece of data; sending the piece of data, by the first computing device, to the second computing device; and accepting the piece of data, by the second computing device, from the first computing device. (Aboulhosn-Column 2 Lines 1-30)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-16, 18, 22-28, 30, 36-39, 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crocitto (US Publication 2005/0144080) in view of Aboulhosn (US Patent 6938042) further in view of what was well-known in the networking art.

While Crocitto-Aboulhosn substantially disclosed the invention Crocitto-Aboulhosn did not disclose (re. Claim 2) wherein the local area connection is a part of an enterprise network.

At the time of the invention it was well-known to establish peer-to-peer networks using widely known networking infrastructure and communication protocols such as LANs, WANs, home networks, dial-up connections, broadband connections, etc.

At the time of the invention it would have been obvious to a person of ordinary skill in the networking art to incorporate widely known networking infrastructure and communication protocols into Crocitto-Aboulhosn. The motivation for said combination would have been to enable a greater number of peer nodes in the peer-to-peer network.

Crocitto-Aboulhoshn disclosed (re. Claim 2) wherein the local area connection is a part of an enterprise network. (Crocitto-Paragraph 25)

Crocitto-Aboulhoshn disclosed (re. Claim 3) wherein the enterprise network comprises a wide area connection. (Crocitto-Paragraph 25)

Crocitto-Aboulhoshn disclosed (re. Claim 4) wherein the obtaining the piece of data by the first computing device comprises: requesting the piece of data from a third computing device; (Crocitto-Paragraph 32, '*content request is submitted to distribution server*') and receiving the piece of data, (Crocitto-Paragraph 32, '*one client is chosen to receive the seed replica*') wherein the requesting and receiving utilizes the wide area connection.

Crocitto-Aboulhoshn disclosed (re. Claim 5) wherein the local area connection is a part of a home network. (Crocitto-Paragraph 25)

Crocitto-Aboulhossn disclosed (re. Claim 6) wherein the home network comprises a broadband connection. (Crocitto-Paragraph 25)

Crocitto-Aboulhossn disclosed (re. Claim 7) wherein the obtaining the piece of data by the first computing device comprises: requesting the piece of data from a third computing device; (Crocitto-Paragraph 32, '*content request is submitted to distribution server*') and receiving the piece of data, wherein the requesting and receiving utilizes the broadband connection.

Crocitto-Aboulhossn disclosed (re. Claim 8) wherein the home network comprises a dial-up connection. (Crocitto-Paragraph 25)

Crocitto-Aboulhossn disclosed (re. Claim 9) wherein the obtaining the piece of data by the first computing device comprises: requesting the piece of data from a third computing device; (Crocitto-Paragraph 32, '*content request is submitted to distribution server*') and receiving the piece of data, wherein the requesting and receiving utilizes the dial-up connection.

Crocitto-Aboulhosen disclosed (re. Claim 10,22) wherein the communicating to other peers in the peer-to-peer network group comprises: updating a local data store with informational data about the piece of data; (Aboulhosen-Column 3 Lines 45-50, *'distributing updates to the metadata of the shared file'*) and propagating the updates to the data store to local data stores residing on the other peers in the peer-to-peer network group. (Aboulhosen, Column 6 Lines 50-60, *'sends metadata to the new member'*)

Crocitto-Aboulhosen disclosed (re. Claim 11,23) wherein the locating the piece of data on the first computing device comprises: identifying in a local data store a record corresponding to the piece of data; and determining, from the record, at least one computing device in the peer-to-peer network group that possesses the piece of data. (Aboulhosen-Column 2 Lines 1-30)

Crocitto-Aboulhosen disclosed (re. Claim 12,24) wherein the obtaining the piece of data by the second computing device comprises: initiating a request, by the second computing device, to the first computing device for the piece of data; sending the piece of data, by the first computing device, to the second computing device; and accepting the piece of data, by the second computing device, from the first computing device. (Aboulhosen-Column 2 Lines 1-30)

Crocitto-Aboulhossn disclosed (re. Claim 13,25,36) wherein the obtaining of the piece of data, by the first computing device, and the obtaining the piece of data, by the second computing device, from the first computing device occurs as a real-time stream of the piece of data. (Crocitto-Paragraph 21)

The Examiner notes that at the time of the invention methods for downloading streaming media were well-known in the art. (See Hashemi US Publication 2003/0212804) It would have been obvious to combine what was well-known regarding real-time streaming in order to implement a more efficient download mechanism.

Crocitto-Aboulhossn disclosed (re. Claim 14,26,37) wherein the piece of data is a product update. (Crocitto-Paragraph 21)

Crocitto-Aboulhossn disclosed (re. Claim 15,27,38) wherein the piece of data is an application. (Crocitto-Paragraph 21)

Crocitto-Aboulhossn disclosed (re. Claim 16,28,39) wherein the piece of data is a virus definition file. (Crocitto-Paragraph 21)

Crocitto-Aboulhosn disclosed (re. Claim 18,30,41) wherein the piece of data is a media stream. (Crocitto-Paragraph 21)

Crocitto-Aboulhosn disclosed (re. Claim 3,21) wherein the wide area connection is an Internet connection. (Crocitto-Paragraph 25)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17 , 29 , 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crocitto (US Publication 2005/0144080) in view of Aboulhosn (US Patent 6938042) further in view of Davis (US Patent 6760756) .

While Crocitto-Aboulhosn substantially disclosed the invention Crocitto-Aboulhosn did not disclose (re. claim 17) wherein the piece of data is a web cache.

Davis disclosed a peer-to-peer network wherein a particular one of the nodes is designated as a repository node for persistently storing a particular data component and for providing a copy of the particular data component to other referencing nodes of the plurality of nodes which lack, but which desire to access, the particular data component.

Davis disclosed (re. claim 17) wherein the piece of data is a web cache. (Davis-Column 4 Lines 45-65).

Crocitto, Aboulhosen and Davis are analogous art because they present concepts and practices regarding distribution of content in a peer-to-peer network. At the time of the invention it would have been obvious to a person of ordinary skill in the networking art to combine Davis into Crocitto-Aboulhosen. The motivation for said combination would have been to speed up distribution of content. (Davis-Column 3 Lines 35-40)

Claims 29, 40 are rejected on the same basis as Claim 17.

Response to Arguments

Applicant's arguments filed 04/17/2008 have been fully considered but they are not persuasive.

The Applicant presents the following argument(s) *[in italics]*:

None of the cited combination of references discloses the first and second computer to be connected via a local area network... the only disclosed peers in Crocitto (computers 21 and 22) are disclosed as being connected through a wide area data network such as the Internet, not through a local area network as claimed. ... As such, the claims are limited only to computers that are connected via a local area network. In this way, two computers connected to the same local network presumably trust each other and can share such key data without requiring "Big Brother" to keep watch over the process.

The Examiner respectfully disagrees with the Applicant. In Crocitto the content files are provided using a LAN. Since the peer clients in Crocitto are able to share data via a LAN thus Crocitto disclosed *the first and second computer to be connected via a local area network*. There is no indication in the claim language that the peer-to-peer clients are connected directly and exclusively to the same LAN and that data transfer is performed exclusively the same LAN without traversing other networks.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., *peer-to-peer clients are connected directly and exclusively to the same LAN wherein data transfer is performed exclusively on the same LAN without traversing other networks*) are not recited in the rejected claim(s). Although the claims are

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interpreted in light of the specification, limitations from the specification are not read into the claims.

Furthermore the Examiner notes that Aboulhosen disclosed wherein the group member computers are connected to each other directly via a LAN. (Aboulhosen-Column 5 Lines 55-65)

The Applicant presents the following argument(s) *[in italics]*:

Many of the independent claims call for the data to be very specific data. The claimed data types have the potential to go to the core of the operating system of a computer while the files described and contemplated in Crocitto are simply video or music files...it is clear that the claims are calling for a very specific type of data that is not disclosed or contemplated by Crocitto.

The Examiner respectfully disagrees with the Applicant. While Crocitto describes a preferred embodiment for sharing music files Crocitto is not limited to said music files. Rather the file sharing system of Crocitto is applicable to all types of files including product update files, application files, virus definition files. Furthermore Davis disclosed (re. claim 17) wherein the piece of data is a web cache.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., *data types that have the potential to go to the core of the operating system of a*

computer) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.

Conclusion

Examiner's Note: Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Greg Bengzon whose telephone number is (571) 272-3944. The examiner can normally be reached on Mon. thru Fri. 8 AM - 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Vaughn can be reached on (571)272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Paul H Kang/
Primary Examiner, Art Unit 2144

/G. B./
Examiner, Art Unit 2144